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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                      |   |                                |
|----------------------|---|--------------------------------|
| -----                | x |                                |
| PATRICIA A. MARTONE, | : |                                |
|                      | : | Civil Action No.:              |
| Plaintiff,           | : | 11-civ-1990 (JGK)              |
|                      | : |                                |
| vs.                  | : | <b>ECF Case</b>                |
|                      | : |                                |
| ROPES & GRAY LLP,    | : | <b><u>FILED UNDER SEAL</u></b> |
|                      | : |                                |
| Defendant.           | : |                                |
|                      | : |                                |
|                      | : |                                |
|                      | : |                                |
|                      | : |                                |
| -----                | x |                                |

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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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**OTHER AUTHORITIES**

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| Local Civil Rule 56.1(b) ..... | 1  |
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**PRELIMINARY STATEMENT**

When the record is stripped of Plaintiff's speculation, irrelevancies and conclusory remarks, what remains establishes unequivocally that: (i) Plaintiff was terminated for valid and well-documented reasons; (ii) no triable issue of gender or age bias has been raised; (iii) there is no evidence that Plaintiff was terminated because she complained of discrimination; (iv) she does not oppose dismissal of her claim for additional 2010 compensation; and (v) there is no evidence that the Firm terminated her to deprive her of retirement benefits. Plaintiff's claims should therefore be dismissed.<sup>1</sup>

**REDACTED**



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**CONCLUSION**

For all the foregoing reasons, Defendant's motion for summary judgment dismissing Plaintiff's claims in their entirety should be granted in all respects.

Dated: October 15, 2012

PROSKAUER ROSE LLP

By:   
Bettina B. Plevan